UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
TYLER TEXAS

STRAGENT, LLC, ET AL	DOCKET 6:11CV421
VS.	MARCH 6, 2014
INTEL CORPORATION	WASHINGTON, D.C.

VOLUME 1 OF 1, PAGES 1 THROUGH 98

REPORTER'S TRANSCRIPT OF PRETRIAL HEARING

BEFORE THE HONORABLE TIMOTHY B. DYK
UNITED STATES FEDERAL CIRCUIT JUDGE

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(OPEN COURT, ALL PARTIES PRESENT.)

THE COURT: Good morning. I'd like to begin by taking an inventory of what issues there are for me to decide this morning. And I should tell you that this morning posted two orders, one relating to standing; and I've approved the magistrate's decision on standing. So, the sole plaintiff here will be Stragent.

And the other issue relates to the Stragent expert report on damages; and with respect to that, I will allow testimony about the two licenses; but I will not allow the hedonic analysis because I've concluded that it is unreliable. You'll be able to review those opinions during a recess, and you can ask any questions that you'd like to about it.

Why don't we begin by having counsel identify themselves.

MR. ALBRITTON: Thank you very much, your Honor. Eric Albritton on behalf of the plaintiff. With me is Barry Bumgardner, Melanie Bostwick, and Mike Joffre; and we're ready to proceed, your Honor.

THE COURT: Okay.

MR. CAMPBELL: Good morning, your Honor. Chad Campbell for Intel. I'm joined by my colleagues Tim Franks and Aaron Matz. We also have from Intel Chris Kyriacou and Tina Chappell.

THE COURT: Okay. Thank you.

Now, I've received the objections to the preliminary instructions; and I'm going to make all the changes that both sides proposed, with one exception; and that is with respect to the damages instruction. Let me see if I can find this.

I'll have to come up with the language later on.

And then I've received the objections with respect to some of the exhibits. I have not had a chance to review those objections. I'll do that during one of the recesses that we have so that we can address that.

And then I have some concerns about some of the final instructions and want to discuss that, particularly the instructions concerning invalidity which seems to me -- which seem to me to be somewhat abstract and complicated. And I'd like to be able to simplify them, and I'm going to ask each side to give me new proposed instructions on invalidity hopefully by the end of the day tomorrow.

And I think for the moment -- and also a new verdict form.

Are there other items that we should be addressing today besides those?

MR. ALBRITTON: Not on behalf of the

plaintiff, your Honor.

UNIDENTIFIED SPEAKER: I'm not aware of anything either.

THE COURT: Okay. Well, why don't we begin with claim construction argument. I have concluded that there is a claim construction issue here that I need to resolve; so, I don't want to hear argument on whether there is a claim construction issue but, rather, argument on the merits of the two sides' claim constructions.

Why don't we begin by giving each side 15 minutes to address the 3 claim construction issues, and then we'll see where we go from there.

So, Mr. Campbell, why don't you begin.

MR. CAMPBELL: Thank you, your Honor. I thought it would be useful to begin by framing what the dispute is about and I have just a demonstrative *PowerPoint* that we printed out and I believe that there is a copy available for the court. It is a simple demonstration at the beginning of what an incremental computation, when we're talking about a CRC operation, is all about. In computers, obviously we're dealing with digital math, sometimes called modulo 2 mathematics. And a CRC is a polynomial division into input data. We can address the issue and think about it in base ten mathematics that we're all used to because the principles

are largely the same.

And, so, what I've got here on Slide Number 2 is an illustration of what would happen if we needed to divide a deviser, which would be the polynomial Number 19, into a much larger value --

THE COURT: Yeah. I think I understand the basics of it so --

MR. CAMPBELL: Okay. Well, if I could just invite you to turn then to Slide 3 and then Slide 4. The one point that I think is useful to grasp is that if we were limited like this calculator to just six digits and we had a larger number that we had to divide by the deviser 19, we could chop it up just like you would do back in grade school days, into smaller groupings of numbers, divide the number into it and find the remainder and then carry that remainder forward. And, so, we would move forward in chunks at a time.

And the key point, if you look at Slide 4, is that the remainder that we're showing here, which is two steps into the computation of the entire value, is the remainder not only of the first remainder and the next chunk of data but it is also the remainder of the first two chunks of data. And as we proceed forward to Slide 5 and repeat the process again, each time we increment, the remainder from the last value or the last iteration,

which is the current state in the language of the patents, is concatenated or combined with the next chunk of data and then the division is made off of that number and you update the remainder.

THE COURT: Now, is that always the case; or are there iterations of these CRC checks that work on, let's say, a 32 -- 32 bits of data and then make a determination with respect to each chunk as to whether there is an error in it without carrying forward the remainder?

MR. CAMPBELL: It depends on the protocol and the calculation circuit itself.

THE COURT: So, the answer is it is possible in some iterations to do it that way without --

MR. CAMPBELL: It is.

THE COURT: -- carrying forward the remainder.

MR. CAMPBELL: Yes. For example, if you look at Column 4 of the patent, near the bottom --

THE COURT: Uh-huh.

MR. CAMPBELL: This would be Column 4 at about line 59. There is a list there of polynomials that could be used for different degree CRC calculations. The one that says "CRC-8" happens to be a very well-known polynomial that is used for a family of protocols called "ATM." And in particular it is not used for packets of

information but, rather, for the header portion of packets. It's an optional thing that you can do with the ATM family of protocols. But that particular CRC computation, CRC-8, if applied to the ATM AAL2 EC calculation, would actually generate a CRC of 8 bits; and the header that it's calculating that over is 32 bits wide.

So, if you had a 32-bit ALU with 32-bit wide calculating capability --

THE COURT: That would be the processor, right?

MR. CAMPBELL: Yes.

THE COURT: Yeah.

MR. CAMPBELL: That one would be able to conclude in one iteration. Each of the --

THE COURT: One clock cycle, you mean.

MR. CAMPBELL: It depends again on how pipelined the machine is set up to be. You could set up a circuit so that you are only calculating a few of these at a time if you wanted to.

THE COURT: But wouldn't a 32-bit processor do 32 -- process 32 bits at a time in parallel?

MR. CAMPBELL: Yes.

THE COURT: Yeah.

MR. CAMPBELL: The one that's disclosed here

in the provisional application and suggested in the patent is 32 bits wide. And if all you had were 32 bits to run through, you could run it through if you set up your circuit as an XOR, exclusive-or, gate, meaning to do it all in parallel, you could do it in one clock cycle.

THE COURT: Well, your point -- or one of your points is that the CRC circuit doesn't have to process a whole packet at once; it's going to do it in 32-bit chunks. That's --

MR. CAMPBELL: Yes and --

THE COURT: But I'm not sure there is a disagreement about that. I read Dr. Stone's supplemental expert report, and I'm not sure that he's saying anything different than that.

MR. CAMPBELL: I actually think that he is for the following reason. If we look at the other polynomials that are in that list in the patent, each of the others -- the CRC-32, the CRC-16, and the CRC-10 -- those also are very well-known polynomials that are used for network communications like Ethernet or some of the ATM families like the adaptation layer 5 or the adaptation layer 3/4. There is another one called "HTLC." Each of those is far larger than 32 bits; and, therefore, if you had a 32-bit calculating circuit, you simply could not process the --

THE COURT: You'd have to break it up into chunks, right?

MR. CAMPBELL: You would. You would have to break it up into chunks.

THE COURT: But I'm not sure that he's suggesting that the patent does anything different than that.

MR. CAMPBELL: We believe that he is. And the reason we believe that he is is because the prior art does exactly that. So --

THE COURT: But I thought he was pretty clear that he wasn't saying the entire packet had to be processed at once.

MR. CAMPBELL: Okay. I think I understand what the court is referring to, and I can clear that up if we look at another part of the patent. I've got a couple of things collected together that might be helpful at Slide 21.

At Slide 21 we're showing Figure 3 and then some of the language from Columns 4 and 5 that pertain to Figure 3. Figure 3 is a basic embodiment where we have different calculating CRC circuits. The patent goes on in Column 4 -- and I'm referring now on the left-hand side to the top portion -- to explain that you could implement each of those calculating circuits using a

serial calculation circuit where you just processed one bit at a time. The patent does disclose that, and Dr. Stone opines in his report that such an implementation would not lie outside the reach of claim 12 but it would lie outside the reach of claim 16 because it's doing one bit at a time.

THE COURT: Right.

MR. CAMPBELL: Okay. Our point about the problem with his approach has to do with a different embodiment that's also disclosed with reference to Figure 3. If you look down at the last paragraph on Slide 21 --

THE COURT: But where -- I thought your contention was that he was saying that the entire packet has to be processed at once in parallel.

MR. CAMPBELL: He is, and here's why. It --

THE COURT: Well, let me just ask you to sit down for one moment. Let me just ask Mr. Albritton if that is, in fact, what Dr. Stone is saying so that we can see if we're on the same page about this.

MR. ALBRITTON: Mr. Joffre -- if it pleases the court, Mr. Joffre --

THE COURT: Sure.

Is my understanding of Dr. Stone correct or incorrect?

MR. JOFFRE: He is not saying that you have to process an entire packet at once. What he's saying is that there has to be a CRC result under the court's construction. And the way that you generate a CRC result -- that's the thing that -- and everybody here has agreed generally what a CRC result is. That's thing you use for error checking. If you take whatever the input data is, divide it by the hardwired polynomial, you will get the CRC result. That's what --

THE COURT: Is the difference here between the parties that Stragent says that you can't carry forward the remainder; it has to be on a 32-bit by 32-bit basis? Am I misunderstanding here? I'm just -- I'm confused as to what the -- I understand the disagreement about the shift register and whether there can be shear shift register. We'll talk about that later.

MR. JOFFRE: Right.

THE COURT: But I am not clear as to what the difference here between the parties is, say, in the definition of "input." It seems to me as though you are both agreeing that input is not the entire packet, that it's broken down into, let's say, 32-bit segments.

MR. JOFFRE: Right. What the disagreement, I think, is -- and I can be corrected by Intel. The disagreement is the question what do you run the

calculation on. So, in some sense the packet issue is a sideline. The question is do you have a CRC result within --

THE COURT: Everybody seems to agree that it doesn't have to process the entire packet at once, right?

MR. JOFFRE: Right. The question lies in whether or not the -- what you put into the circuit, what that -- making one CRC result, whether that has to be the full -- the full data that will be subsequently checked by the CRC.

So, for example, if you have --

THE COURT: Well, if it's a 32-bit processor, you can only do 32 bits at once, right?

MR. JOFFRE: That's right. And in that embodiment that's right. That's what you would do.

And, so, the point being is that after those 32 bits, if you put in those 32 bits into the circuit, the result you must get is a CRC result, which is the CRC check which is used for error checking. So, if you have 32 bits, the thing that you have to have at the end of the day is a CRC result. What you're not allowed to have --

THE COURT: The CRC result would be either zero or something that's not zero. And if it's zero, there is no error; and if it's greater than zero, there

is an error.

MR. JOFFRE: Well, in the actual checking portion. In the second CRC operation where you are comparing -- making sure that the data across the line was transmitted correctly, that's right. You do the CRC operation and the end result should be remainder of zero. And that's, in fact, the whole point of doing the CRC computation.

The question ultimately is do you have, under the claim language, a CRC operation which is an operation performed using CRC polynomials to generate a CRC result to be used in error checking. And the question then is -- all right. So, what is it that you need to actually do to create the CRC result. And that's defined by the court as well. It is the CRC result, the thing that you're making at the end of the day, is a value equal to the remainder of the input data divided by the CRC polynomial.

So, if you take some chunk of data that you're going to want to --

THE COURT: So, no carrying forward of the remainder is what you're saying.

MR. JOFFRE: What I'm saying is you -- yes. You cannot have -- what you're not allowed to do is to do a computation, call it a CRC computation, but then at the

end of the day you don't get a CRC result because in that instance --

THE COURT: Because you have to carry it forward.

MR. JOFFRE: Yeah. Then you --

THE COURT: I mean, that seems to be -- this aspect of it, that seems to -- if I understand correctly, that seems to be the difference between the parties as to whether you can carry forward a remainder and be within the claim language or not.

MR. JOFFRE: Right. And the question in the -- specifically, to put it to a specific point, in the prior art, the hydrogen atom prior art, what happens is you don't stick the entire value that you're going to create a CRC result in for. What you do is you run a chunk of the data through, less than the whole amount through, once. You get some number that is not the CRC result; it's a -- (indiscernible) residue. And then you use that in order to -- with the additional next chunk of data to again create another residue. And we're saying that operation is not a CRC operation as defined by the --

THE COURT: Yeah. I can understand that. That's the -- apart from the shear and the shift register, whatever, that seems to be the main -- perhaps

the only point of disagreement between the parties. Am I understanding correctly?

MR. JOFFRE: I think there is the shared issue of circuitry. There is also whether or not -- the question becomes also what does parallel decomposition mean. And I think parallel decomposition -- there's been some fights about what -- one bit versus multiple bits. The whole point of parallel decomposition is that --

THE COURT: You've got to do all 32 bits at one time.

MR. JOFFRE: Right. I mean, the question is -- if you have a parallel decomposition under claim 16, it says exclusive-or gates configured in a parallel decomposition of the serial CRC calculation circuit. So, you have to take the CRC calculation circuit and then decompose it into a parallel form. That's what our position is.

Their position, I believe, if I'm fairly characterizing it, is no you don't need to decompose the entire serial CRC circuit. As long as there is some XOR gates in there that are in parallel, then that will suffice to meet the claim language. And we would say no that's not a decomposition of the circuit. That's just a serial CRC circuit that happens to have two XOR gates in parallel.

THE COURT: Okay. Well, I'm not sure that I fully understand that; but let's hear from Mr. Campbell on the other point. So, let's see if there is agreement here.

Are you --

MR. CAMPBELL: I actually think that was helpful.

THE COURT: Yeah.

MR. CAMPBELL: And I'd like to explain why. If I could direct the court to Column 3 near the bottom, there is a discussion there about what a CRC result is. And we would preface this, your Honor, first by noting that when you're doing an incremental calculation, you are feeding 32 bits into the circuit, dividing those 32 bits by a polynomial, and looking for the remainder. What counsel just referred to as a "residue" is a remainder of that division. It is the polynomial divided into the data that was put into the circuit.

THE COURT: Is the difference between you as to whether the remainder can be carried forward or whether each 32-bit thing has to be treated independently and the error check occurs with respect to the 32-bit block without carrying forward a remainder? Is that a --

MR. CAMPBELL: Based on what I just heard, this is what I believe the difference to be. We regard

those residues as CRC results. The plaintiff does not. And their theory is that the portion of the court's claim construction that says "to be used in error checking" refers solely to a CRC value that gets appended to a packet and sent along. That's fundamentally the difference that they're talking about with respect to hydrogen. Hydrogen does create those check zones that go on packets. It does so incrementally. And they're suggesting to the court that those incremental polynomial divisions are not CRC results.

THE COURT: And not within the claim.

MR. CAMPBELL: And not within the claim.

THE COURT: And that's the basic difference with respect to what we've been talking about.

MR. CAMPBELL: That is correct.

THE COURT: Okay. And how am I supposed to resolve that issue? What helps me in the specification?

MR. CAMPBELL: Okay. If we look at Column 3 -- I'm going to take the court to two different places. I want to answer your question first by focusing on what they rely upon. Column 3 near the bottom. They say that the patent says at line 60 at Column 3 "The CRC operation operates on a block of data as a unit. The block of data can be conceptualized as a single (large) numerical value. The CRC algorithm divides this large

value by a number (the CRC polynomial or generator polynomial) leaving the remainder, which is the CRC result."

It then goes on to say "The CRC result can be sent or stored along with the original data," and it proceeds from there.

They are arguing that the only thing that would qualify as a CRC result in that paragraph is a remainder value that actually gets appended to a patent and sent along. We think that's incorrect for several reasons, and I'd like to just walk through the top two or three briefly with the court.

THE COURT: They're saying that this language doesn't allow you to carry forward the remainder.

MR. CAMPBELL: I don't think they're saying that it would not allow you to carry forward the remainder. What they're saying is the only thing that qualifies at the end of the day --

THE COURT: Under the patent.

MR. CAMPBELL: -- under the patent is the very last thing, so that these divisions by the polynomial of data that's input to the circuit 32 bits at a time do not qualify as CRC results. We say that they do qualify as CRC results because they are used in error checking. They are necessary in order to get to a final answer. If

you don't have them, you can't get to the final answer.

THE COURT: Well, they're saying that each 32-bit thing is independent and each -- the result of running this operation under each 32-bit block is a CRC result. Whereas you're saying that within the claim is an embodiment in which the remainder is carried forward and the CRC result is the aggregation, if you will, of those remainders at the end of the data packet. Am I -- is that correct?

MR. CAMPBELL: Dr. Stone does not --

THE COURT: No, but --

MR. CAMPBELL: It is not quite correct.

THE COURT: Okay.

MR. CAMPBELL: And I'd like to explain why. Dr. Stone does not disagree that the hydrogen chip ultimately produces a CRC result. He is saying that the only time it produces the CRC result is when you've gotten to the very last iteration and you're done processing a packet, for example.

THE COURT: Right.

MR. CAMPBELL: We're trying to say yes, that's a CRC result, we agree; but the earlier iterations are also CRC results within the language of the specification and the understanding of skill in the art and particularly with reference to embodiments that would be

read out of these claims otherwise.

So, let me just try one more time. When I went through that example with the division at the beginning, each of those iterations produced a remainder which was a division of data input to the circuit by a polynomial. And, so, that -- under what's taught here and what's generally understood, that is a CRC calculation; that's a CRC result. The question is what are you going to do with it. Are you going to stick that one on the end of a packet or are you going to feed it back in its current state so that you can process another 32 bits on the way to some sort of final conclusion?

THE COURT: Okay.

MR. CAMPBELL: Okay. Now, fundamentally the problem that we see can be illustrated by pointing to some other claims that aren't asserted but that use the same language of the claims that are asserted, like input data and CRC circuits. If we look at claim 1 of the '072 which is at Column 6, it talks about instructions that indicate CRC operations are to be executed and then a plurality of CRC circuits that perform the operation. And at the last final step of the method, you actually generate the CRC result with the selected CRC circuit. That's the independent claim.

If we go down to dependent claim 2, there is a

further requirement that you append the CRC result to the input data and transmit the input data and the appended CRC result over the network.

So, the idea that the only CRC result that would qualify as a CRC result that the patent is talking about is one that gets -- you know, the final answer is intention here.

THE COURT: But it seems to me that this claim language doesn't talk about carrying the interim results, if you will, forward and aggregating them. It just talks about carrying the result forward.

MR. CAMPBELL: This one talks about appending the CRC result to a packet and sending the packet to another machine that's then going to do a calculation to see if it gets the same CRC result so that it can compare and conclude whether the --

THE COURT: Right.

MR. CAMPBELL: That's what it's talking about.

The incremental calculations that we're talking about qualify as CRC results because they are polynomial divisions of input data. They don't happen to be appended to a packet. Instead, they are used to move to the next batch of data and continue the calculation.

Now, that style of computing is actually described in the specification with reference to

Figure 3, Column 4 and Column 5. And I think we can just look at Figure 3 to get the basic point here, and then I'd like to take the court to some language in Column 4 which helps to clarify this.

Figure 3, at the top -- well, there is a dashed line, first of all, indicating that these are circuits inside of an ALU. I mean, that isn't debated. This is part of the ALU in Figure 2. But you'll notice that it's got an input CRC data line. It's a bus that feeds in data into, you know, each of these circuits -- it is shared. But that input CRC data line, as the specification describes, includes two things. It includes what are called "input data," "portions," and current CRC state or "current state." And that can be found, if you flip to Column 4 --

THE COURT: Where is the reference here to "current state"?

MR. CAMPBELL: It's in Column 4, your Honor.

THE COURT: All right.

MR. CAMPBELL: At about line 36. It's discussing Figure 3 there. It says, "The selected circuit 305-308 performs the CRC operation on the input data and outputs the CRC results. Although the input CRC data is shown in Figure 3 as being input on a single data line, CRC circuits 305-308 may include two inputs: input

data and current state value. These two inputs can be concatenated together and conceptually considered as a single input value."

Now, the reason it's called "current state" and then an input data portion and the reason it's referring to concatenation goes back again to the way in which these things typically operate because the packets are so large and the circuits that calculate the CRCs are not big enough to handle them all in one go. So, current state is a reference to what is the existing state, what's the existing remainder, what's the existing residual that we're using. The input data portion is what's the next chunk of data that I need to process. Those two things are concatenated together, fed into the circuit, and you go again. And you keep going until you're done.

So, that is an embodiment here that shows this idea of using, you know, an incremental style of calculation to get to a final result; and you have more than one CRC result along the way because you have more than one iteration where you are taking input data, dividing it by a polynomial, and looking for the remainder.

THE COURT: Okay. Anything else on this point?

MR. CAMPBELL: The only last point that I would make is that there is a passage at Column 5 that makes completely clear that you can do Figure 3 either using serial implementation or a parallel implementation. If you look at line 47, it points out that although the discussion above has been about a serial circuit, in alternative implementations, you can implement them in a parallel fashion.

If we consider the polynomials that are listed in the patent at Column 4, with one exception, the others are all polynomials that are used for packets that are too big to calculate all at once; and it would require an incremental style of calculation. So, if you combine the idea that you're going to have these big packets, clearly Figure 3 talks about being able to do it incrementally with the disclosure here that points you to these protocols that have packet sizes that are too big to do all at once, then, your Honor, we would submit that we should not be construing the claims to exclude what the patent's teaching us to use the disclosure for.

THE COURT: I'm not sure that they are disagreeing with you about that. I mean, it seems to me that the real difference between you is whether the patent is limited to doing 32 bits at once and coming up with a CRC result or whether -- and then saying that's

the end of the matter or whether you're treating the CRC result that you get there as an interim result and carrying it forward. That seems to be the difference between the two of you. Am I misstating it?

MR. CAMPBELL: I don't believe that that's the difference between us. And maybe I could make the example very concrete. Some of the prior art performs calculations to correspond to these very polynomials and the protocols that they go with. So, all these big network protocols that have large packet sizes, the prior art addresses handling those. And it does so by using, you know, 32 bits at a time, the incremental style of calculation until you get to the final answer where you've processed everything that you want to. You take that value, you append it to the packet, and you send it along.

Their argument is that that style of computing a CRC is outside the reach of claim 12 and also outside the reach of claim 16, and we are arguing that that's not so, that the patent actually teaches you to do it that way, that those things are inside the reach of claim 12 --

THE COURT: In that part of claim 4 that you've shown me.

MR. CAMPBELL: Correct. And the provisional

application also has some instruction in it. It's incorporated by reference that it's similar.

THE COURT: Well, let's go to the provisional application and this sharing issue. I don't get much out of that Federal Circuit case that you cited. The claim construction decisions tend not to be easy to carry forward into other technology and other patents. And when I look at the provisional application, it does seem to be rather different from what we're dealing with here in the sense that it doesn't even, as I read it, mention separate circuits. So, to the extent that it shows sharing, I'm not sure that that's what is reflected in the two patents that we're dealing with here. So, could you address that?

MR. CAMPBELL: Yes, I can. I would start with Figure 3. And actually I --

THE COURT: Figure 3 of the --

MR. CAMPBELL: Of the patent.

THE COURT: Of the patent.

MR. CAMPBELL: I've actually highlighted it in a way that I think will help me explain this to the court. It's on Slide 19.

THE COURT: Am I right that there is no reference in the provisional to separate circuits?

MR. CAMPBELL: The court is correct that there

are fewer details about how the circuits are put together in the provisional than there is in Figure 3, with a couple of exceptions; and that's what I'd like to talk about are the exceptions here.

THE COURT: Just a second. I need to --

MR. CAMPBELL: Of course.

THE COURT: Yeah.

MR. CAMPBELL: Okay. At Slide 19 of the handout -- I'm sorry. I was meaning to refer to this slide right here (indicating) first.

THE COURT: Okay.

MR. CAMPBELL: First of all, let me preface this by saying that we don't disagree that there needs to be a first circuit and a second circuit and we think the claim language itself tells you what needs to be separate. The first circuit needs to have its own hardwired polynomial, and the second circuit needs to have its own hardwired polynomial. There isn't a debate between the parties here about hardwired polynomials existing in the prior art and being separate.

The discussion here is whether there are other things about the way the processors are organized that cause those separate hardwired polynomials to collapse into one circuit or not.

THE COURT: Right. And you both seem to agree

that the provisional shows sharing, right?

MR. CAMPBELL: The provisional shows sharing but does not necessarily show you that sharing means one circuit. And that's what I wanted to direct the court's attention to in this highlighted Figure 3.

If we think about the style of computation that Figure 3 shows when you're using 32 bits at a time and you're feeding in the current state and input data concatenated together on that input CRC data line, there is a feedback path there that is shared among each of -- it is the way you get -- it's the same feedback way that you get data into each of the circuits. So, the CRC-32, the CRC-16, the CRC-10, and the CRC-8 all have a common feedback bus where the current state and the data that you're going to feed to that circuit travel. When you're going to update --

THE COURT: Well, which is the feedback bus? How do I know what that is?

MR. CAMPBELL: Okay. When you're doing incremental style of calculation --

THE COURT: No, in the Figure 3 what --

MR. CAMPBELL: Okay. There are two parts to this. And, your Honor, I apologize for this; but when you go back out to Figure 2, you can see an ALU that is a trapezoidal shape like this.

THE COURT: Right.

MR. CAMPBELL: And it has an output -- a single output that goes around and connects back up to the bus and then inputs coming from the top. So, in Figure 3 the ALU out at the bottom is where the CRC result goes. You update the current state by storing it in a register. And then when you need to use that current state for another iteration, it comes in on the input data line down into the circuits; and you compute another cycle.

THE COURT: Okay. But this seems to be a different argument than reliance on the provisional. I was addressing first whether the provisional does you much good.

MR. CAMPBELL: Okay.

THE COURT: And I'm -- and it does seem to me that the provisional is sufficiently different from the specification and the claims of the two patents that we're addressing here that it's not all that helpful.

MR. CAMPBELL: I would reference -- or respond to that --

THE COURT: I know it's incorporated, but still.

MR. CAMPBELL: Yeah. Let me tell you why the provisional is relevant. It is incorporated by

reference; and, so, first of all, we know that an ALU that's 32 bits wide with a 32-bit bus is something that the inventor had in mind for his invention. The other thing that we know is that the provisional describes four specific functions or instructions as "CRC operations." That's a term that shows up in the claims. And if you look at each of those instructions -- it will say, for example, CRC-32. It's got an Operand A, and then it's got Current State B. So, that is a reference in the provisional to this style of incremental computation where you've got protocols of packets that are too big to do 32 bits at a time. That's why we think the provisional is relevant. It teaches that incremental style of calculation. If we move to the patent and look at Figure 3, that's saying --

THE COURT: But what does that have to do with sharing?

MR. CAMPBELL: In order to do the incremental computation, you have to capture the polynomial division from the first iteration and hold onto it. You may have to hold onto it for a while because in an ALU you're not necessarily going to be able to go right back on the next cycle. There might be something else that the ALU wants to do. So, you have to capture it and hold onto it until you're ready to use it again.

So, by engaging in that style of computing a CRC and calling those incremental calculations "CRC operations," that informs us what the patentee had in mind when we move to the main disclosure in the specification.

THE COURT: But why -- I mean, it strikes me that the two different styles of computation, if I understand correctly, could just as easily be done with sharing or without. Is that correct?

MR. CAMPBELL: It depends on what you mean by "sharing." We don't think in the prior art that there is sharing between the actual CRC circuits. Dr. Stone takes a different view because he's saying that, well, there's a common register where the residue gets written and you have to take that residue as the current state to feed it back on iteration; so, therefore --

THE COURT: Well, that does seem to be an issue that's not claim construction.

MR. CAMPBELL: It depends, your Honor, on whether that would be required for the embodiments that are disclosed. In other words, it is an issue of claim construction because Dr. Stone is trying to use a particular embodiment and say, well, that embodiment is like the prior art and inside the reach of the claims. We're saying no, the prior art is like a different

embodiment inside the reach of the claims and you're trying to read that one outside of it.

So, there is a debate, we acknowledge, between what qualifies as the circuit and whether these things that Dr. Stone says are shared should be part of that conversation. But even if it is, our position is that his argument is taking alternative embodiments that are within the reach of the disclosure and moving them beyond the reach of the claims.

THE COURT: Well, yeah, I understand that. But you both seem to agree that sharing is an issue here; and I'm just trying to understand why a particular method of computation as opposed to another suggests that there is no sharing. Because if I understand correctly, either method could be performed with or without these shared components. No?

MR. CAMPBELL: In the way that it is prepared, in the way that it's described in the specification, the things that Dr. Stone is pointing to in the prior art as being shared have to be used to get data into each of the circuits. You can't get data into the CRC-32 in Figure 3 or the CRC-16 in Figure 3 or the others without using the same feedback pathway that's shown here. There isn't another way to do it.

So, if you're doing incremental computation,

you've got a single output, you've got a register file in Figure 2 where you could hold onto it, and then you've got to feed it back in on this input CRC data. And those are the same things that he's saying in the prior art are shared and therefore collapse everything into a single circuit.

And, so, if he's right about that, what he's done is essentially to exclude an embodiment that's taught in the specification. And the way that he gets there -- he has many different pieces to the puzzle -- are basically the three terms that we presented to the court for construction.

THE COURT: So, what you're saying is that the patent describes a method of computation which can only be accomplished if they're sharing.

MR. CAMPBELL: Can only be accomplished if you're doing -- it discloses -- I'm hesitating for the following reason. A circuit designer could choose, you know, to implement a circuit in a couple of different -- circuit or circuits in different ways.

So, for example, we have prior art where, you know, there is no sharing. There is independent, you know, feedback pathways. That's not very efficient. That's not the way people would typically do it, and it's not the way the provisional suggests that you should do

it or that the patent figures suggest that you should do it. You want to be efficient and not unnecessarily use things or double up on things where if you're only going to be doing the computation with one circuit or the other, you know, you use them together. And the patent in Column 4 specifically teaches that these particular circuits in Figure 3 are only going to be used one at a time. It says the instruction is going to indicate which one you're going to use and that's the one that performs the operation.

So, the mere fact that you have, you know, a pathway in common to get the data into those circuits we don't think means that they are sharing. They aren't sharing. Dr. Stone says, well, in the prior art that common feedback pathway does mean that it's sharing. So, his argument as applied to what's taught here would exclude an embodiment that we think a person of ordinary skill in the art would conclude is inside the reach of the claims and not outside.

THE COURT: Okay. Well, let's hear from Mr. Joffre and then we'll -- you'll have another chance.

You might as well start with the sharing issue.

MR. JOFFRE: So, the sharing issue, I think, is -- has come up in this way; but it's in some sense a

shorthand. What we've always maintained -- and it's fairly clear in the Stone reports -- is that the claim requires a first circuit configured to perform a first CRC operation. So, there has to be one that's configured to perform a first CRC operation.

There has to be a second CRC circuit that is configured to perform a second CRC operation.

THE COURT: Okay. So, they're saying -- putting aside the provisional application which doesn't seem to me to be all that helpful, what they are saying is that the specification contemplates a computational method in which there is sharing rather than separation. What's the answer to that?

MR. JOFFRE: There's an easy answer. There are two embodiments. The first embodiment is shown on Column 5, line 37. The first one is "As described above" -- "Multiple CRC operations, each potentially using a different polynomial, may be implemented in separate CRC circuits. The appropriate CRC circuit to use for a particular CRC operation is indicated in the CRC instruction."

It then moves on to Column 5, lines 43 to 46. "In alternate implementations, instead of using four separate CRC circuits 305-308, a single CRC circuit could be used that includes four separate hardwired

polynomials. At any given time, only one of the four hardwired polynomials may be in use by the circuit."

That second alternative embodiment is what's found in claim 6 which is not asserted in this case. As it says in claim 6, there is a circuit -- I'm reading now from Column 6 around line 40. There is a circuit "generating the CRC result using the CRC circuit, the input data, and a selected one of the hardwired polynomials."

So, the issue is that the patent discloses one form of CRC circuit where there is a CRC circuit and you're allowed to choose different hardwired polynomials within that circuit. There is a second embodiment where you're talking about a first circuit and a second circuit, and that is the patent that -- the claim that is being asserted --

THE COURT: But I understood him to be saying -- maybe I misunderstood. I understood him to be saying in the embodiment where you have separate circuits, that there is nonetheless a description in the specification of doing a computation which involves a sharing of the feedback pathways.

MR. JOFFRE: And, in fact, that's not true. So, if you look at page -- it's 19 of their slides. You'll see a lot of highlighted -- they've highlighted it

for you, Figure 3; and they are talking about those feedback paths. And they are talking about they're sharing of those feedback paths.

If I can direct you to Column 4, lines 50-51. Those lines are not part of the CRC circuit. Rather, this --

THE COURT: I'm sorry. Where are you? Column 4?

MR. JOFFRE: Column 4, lines 50-51. You can also see this also up around 31.

But it says, "CRC calculating circuits 305-308" -- the things -- the CRC circuits as shown in this embodiment are those 305, the 306, the 307, the 308. Those are the circuits that are both found in the claim; that's the circuits that are shown in the figure. So, to talk about all of the other stuff around them that might be shared is in some sense irrelevant for the purposes of the claim.

THE COURT: Wait. I'm not sure that I understand this sentence. Let's see. "CRC calculating circuits may be implemented similar to circuit 400."

MR. JOFFRE: Right. That's on the next page.

Figure 4 shows the registers and the actual calculation of a CRC result.

THE COURT: Well, are you saying that the

highlighted pathways here are not feedback pathways?

MR. JOFFRE: We are saying they are not part of the CRC circuit.

THE COURT: They're not -- so, how are they identified as not being part of the CRC circuit?

MR. JOFFRE: Because they list 305, 306, 307, and 308 in the patent as the CRC circuits. CRC circuits -- you can see this also on Column 4, lines 25. "CRC circuits 305-308 may execute CRC operations based on 32, 16, 10, and 8 bit polynomials, respectively." It's 305, 306, 307, 308, the boxes, that are the CRC circuits. So, to --

THE COURT: And the highlighted pathways are what?

MR. JOFFRE: Those are just -- those are ways that the data gets into a CRC --

THE COURT: Input?

MR. JOFFRE: Yeah.

THE COURT: All right.

MR. JOFFRE: They're input and output.

So, to talk about how that step is shared is irrelevant to the point of whether or not the CRC circuits can share information.

THE COURT: Okay. I understand what you're saying.

MR. JOFFRE: Okay. So, the whole -- the point here is that you have to have two circuits, and they each have to be configured to perform a CRC operation. That means they have to each be able to generate a CRC result. The reason why this is a fight is because in the hydrogen atom prior art --

THE COURT: I understand.

MR. JOFFRE: So, I don't have to elaborate.

And there's only ever one CRC result. So, you could reconfigure the hydrogen atom to perform a different CRC result, to provide a second CRC result; but you don't have two, at the same time, circuits. And that's why this whole -- you have to be able to calculate two (indiscernible). That's not the point. The point is for there to be anticipation there actually has to be two circuits that are configured at the same time. Otherwise, you don't meet the claim language.

THE COURT: Okay. Let's just pause on that. I'd like to hear from Mr. Campbell on this last point before -- and we'll come back to you.

So, what's your response to the contention that the highlighted pathways in Slide 19, whatever it is, are not part of the CRC circuits?

MR. CAMPBELL: Okay, your Honor. I have two things to say in response to that. First of all, he

pointed to a portion of the specification that talks about a serial implementation; and that's not what we're discussing. He took the court directly to a portion in Column 4 where it talks about CRC calculation circuit 400. And the figure in -- the CRC circuit at Figure 4 is a serial circuit. There is a different way to do Figure 3, and you have to go over to Column 5 to pick up the language there.

And at the very bottom of the column it says "additionally," at line 50, "although CRC circuit 400 is shown as a serial calculation circuit" --

THE COURT: I'm sorry. Which line is this?

MR. CAMPBELL: Line 50.

THE COURT: 50. Okay. Yeah.

MR. CAMPBELL: So, "although CRC circuit 400 is shown as a serial calculation circuit, in alternate implementations it could be done in a parallel fashion." It says "such a parallel embodiment could be implemented as a circuit exclusive-or gates. The difference between exclusive-or gates and what's shown in Figure 4 is that exclusive-or gates can't hold state. You put data in, and it just passes right through. The serial computation circuit in Figure 4 has flip-flops or registers that do hold state.

THE COURT: But still, how do I know that the

highlighted portion on Slide 19 is referring to a pathway within the circuit as opposed to an input pathway --

MR. CAMPBELL: Think of it this way, your Honor. If we just look at Figure 4, this is the serial circuit. The patent says --

THE COURT: Which slide are you looking at?

MR. CAMPBELL: I'm looking at Figure 4. It's not in my slide deck. I'm sorry.

THE COURT: Okay.

Yeah.

MR. CAMPBELL: If we look at Figure 4, the patent expressly says that this is showing us a CRC circuit. It's got a series of registers; but importantly, at the far right-hand corner, it has an input. It --

THE COURT: Yeah. But what are you saying are the shared pathways? The line at the bottom?

MR. CAMPBELL: No. Your Honor, the thing that would be shared is this arrow right here, this little one, the one where it first comes in, the data -- it's concatenated and it first comes into this circuit.

THE COURT: How is it labeled?

MR. CAMPBELL: It's to the right of 422.

THE COURT: The arrow coming in to the right of --

MR. CAMPBELL: Yes.

THE COURT: Yeah.

MR. CAMPBELL: The arrow coming in to the right is showing you how the data, which is labeled 431 and 432, are fed into the circuit. So, there is an input --

THE COURT: Yeah. But are you contending that's a shared feedback pathway? That doesn't seem to be.

MR. CAMPBELL: It is a shared feedback pathway for the following reason. You have to remember that this Figure 4 is illustrative; and if you look at Figure 3, each of those boxes, it's going to have something like Figure 4 in it if you're doing a serial implementation.

And the input CRC data, the way that you get these CRC values over here that are state -- current state in Figure 4 into the circuit is on that common bus that feeds into each of them.

THE COURT: Yeah, but that sounds like an input.

MR. CAMPBELL: It is an input, but the input is necessary in order to do the incremental style of computation.

THE COURT: Okay. I think I understand what you're saying.

Why don't we go back to Mr. Joffre and you can comment on this last thing and then we'll move on to the other point.

MR. JOFFRE: Sure. I think, as was acknowledged, Figure 4, this computation here, that -- whatever is shown as 400, that lies inside those boxes. So --

THE COURT: It's labeled like 410, 411?

MR. JOFFRE: Yeah.

THE COURT: Yeah.

MR. JOFFRE: So, that all lies inside. So, to talk about other things out there that might be shared, that's not -- I don't take anything from 400 to challenge what we are saying. We're saying yes, there's four separate circuits and they are all doing things separately, or could be doing things -- well, they're all configured, rather, to each do a CRC calculation.

THE COURT: This Figure 4 does show sharing; but what you would say, it's sharing of the input pathway.

MR. JOFFRE: Right. They are all -- yeah. There are multiple different -- you only -- the data comes in; and, so, it has to go to the circuits.

THE COURT: Okay. All right. So, why don't we move on away from the sharing issue into the input

issue. But I think we're going to need to hear from Mr. Joffre in response to what Mr. Campbell said before.

MR. CAMPBELL: I'm sorry. Which point are we going to be addressing?

THE COURT: Well, I think the -- it seemed to me that as part of this discussion, you somewhat narrowed the remaining disagreements here. And if I understand correctly, the fundamental disagreement -- maybe it's not the only disagreement -- is whether the carrying forward of the remainder takes an embodiment outside or takes prior art outside of the scope of the claims here. Does that statement of the issue make sense to you?

MR. JOFFRE: I heard that. I don't believe that it takes it -- that there is an exclusion of embodiments in the way he suggests. The reason being --

THE COURT: But it is --

MR. JOFFRE: I --

THE COURT: You've got to tell me whether I'm understanding this right or not, the disagreement between the two of you. It seems to me that the fundamental disagreement is whether the CRC result is the result that you get from processing or doing the CRC computation on, say, a 32-bit chunk --

MR. JOFFRE: Right.

THE COURT: -- or whether the patent

contemplates embodiments in which the remainder is carried forward into some later stage of the computation.

Does that make sense to you as a statement of the disagreement between you?

MR. JOFFRE: I think that's right. I think what we're -- I think our point is simply that in that instance when we're specifically talking about the hydrogen prior art, we're asking whether or not -- does this residual that it creates at the end of the day, is that a CRC result, is essentially what the question is. And what we're saying is when you go through once and you get this number, it is not a value that is then used to perform error checking. So, therefore, going through this thing and getting --

THE COURT: Under the patents.

MR. JOFFRE: Under the patent claim and under what the court's previous construction of "CRC result" is. If you go through once, you get some thing; it's not used for error checking. All it's used for is it's some number that will be used -- you know, put through the circuit again and again and again and again and eventually at the end of the day --

THE COURT: The hydrogen embodiment, you're talking about?

MR. JOFFRE: Yes.

THE COURT: Yes.

MR. JOFFRE: And eventually you will get to a thing that is a CRC result. And it's not simply us that is pointing to that final thing that is used for error checking as the CRC result. In making his invalidity contentions why the hydrogen prior art reads onto this claim, Dr. Stark pointed to that end result because that is the CRC result, well-known in the art, that you get to use error checking. So, it is the final thing at the end of the day. It's not this iterative -- not every time you go around the loop do you get a CRC result.

And, so, our point is you can't use that one value through as an indication that you have produced a CRC result.

THE COURT: Your view is that's an interim result.

MR. JOFFRE: Right.

THE COURT: It's not a CRC result.

MR. JOFFRE: That's --

THE COURT: The CRC result has to be the final result.

MR. JOFFRE: That's right.

THE COURT: All right.

MR. JOFFRE: That would be the narrowing of the dispute.

THE COURT: Okay. So, what -- have I missed anything? It seems to me that this is boiling down to the dispute that we just discussed which I might characterize as the "interim versus final results dispute" and the "sharing dispute." Is there -- am I missing something? Is there another dispute here?

MR. JOFFRE: There is the final dispute which is about parallel decomposition. And, so, I can quickly sum up what that dispute is --

THE COURT: Okay.

MR. JOFFRE: -- if you would care to --

THE COURT: Go ahead.

MR. JOFFRE: So, the dispute here is what does it mean to decompose a serial circuit in parallel. And what we say is when you decompose under the claim language, you have to create a configuration of exclusive XOR gates that are configured in a parallel decomposition -- i.e., in parallel -- and it has to the decomposition of the serial CRC calculation circuit. And, so, what we say is under that language, what you need to do is to take the CRC serial circuit that's found in, for example, Figure 4 and then decompose it into parallel components.

What you're not allowed to do and what -- because it just doesn't make sense given the claim

language, is to say, well, as long as I have within that serial CRC circuit any two XOR gates that are set up in parallel, that is a parallel decomposition of the circuit. We would say no, that's not -- the whole point of it is -- in reading the claim language itself, is no you have to decompose the circuit into parallel. And, so, that is why this fight boils down -- comes up in the hydrogen atom. The --

THE COURT: I'm not sure that I'm following this. Try again.

MR. JOFFRE: Okay. So --

THE COURT: I'm -- you referred to XO gates. Is that -- what's an XO gate?

MR. JOFFRE: So, the XOR gates are the gates that the bits go through that can be seen on Figure 4. For example, you'll see 420 as an example. They are essentially gates where -- they are very, very simple gates where it has two inputs and an output. And if you have an input -- if the two inputs are the same, the end result is going to be zero; but if the two inputs are different -- i.e., a one and a zero -- you're going to get one. So, that's all that the gate does. It just basically does very simple mathematical -- or it can be reduced to a very simple mathematical computation.

THE COURT: Okay. So, what's the difference

between?

MR. JOFFRE: The question is whether or not -- this is shown here in Figure 4 as a serial circuit. The reason being is you take the -- you put in the data. You shift everything once. You shift everything -- and if you shift enough times, you'll eventually get the CRC result.

THE COURT: What do you mean "if you shift enough times"?

MR. JOFFRE: So, the data comes in from the right-hand side. You'll see the input data --

THE COURT: Uh-huh.

MR. JOFFRE: -- is 101 -- you'll see that at 434, for example.

THE COURT: Yeah.

MR. JOFFRE: You put each one of those into the register as shown in 410, 411, 412, 413. You put those in, feed them in. They're just memory. And then what you do is you shift every clock cycle. And, so, the result -- whatever was found in the register 410 will go back to all those places shown in those arrows. You'll see one goes back to the XOR gates -- each of the XOR gates. Every other bit gets shifted over one.

And, so, basically what you're doing is you're pushing the bits through the circuit. And as you do

that, the end result of doing that is it turns out cleverly to be equivalent of a mathematical computation of dividing a data by the wired polynomial. So, it is basically a very clever way of doing math very quickly.

And, so, you do that through this serial arrangement. What is not shown in any figure, however, is that you can do -- instead of doing this sort of one end at a time in a serial fashion -- and it's not in any figure -- is you can -- it says you can do it in parallel fashion. So, you set up the gates in parallel with one another so that all of the gates would see the same initial input.

It's much more complicated than what's shown here, but how to break up a circuit into either a serial or a parallel decomposition is well-known.

The question that everybody seems to have focused on is are you allowed to simply have any two gates, any two pieces of circuitry in parallel, in however small amount, or whether or not you have to decompose the entire CRC circuit into a parallel arrangement.

THE COURT: You mean 32 bits at once? Is that --

MR. JOFFRE: Yes.

And, so, what -- the way that this has been

characterized is well, you know, how quickly can you do that computation. If you have parallel arrangement, the nice benefit of having a parallel arrangement is that you can do computations much more quickly because you're cheating in all of the data at once. And this was shown primarily in the Stone infringement report. He described how one would break up a circuit in parallel in -- I believe it was paragraph 70.

So, the question lies in do you have to take the entire circuit and create a parallel arrangement or can you take any little piece of it and make it parallel; and that is sufficient to meet claim 16.

THE COURT: Well, I'm not sure that I'm following this. I thought the dispute was about whether it had to parallel process all 32 bits at once or parallel processing each bit -- each separate bit was sufficient or whether it -- in other words, whether it had to parallel process the entire input or could do it a bit at a time. Am I understanding?

MR. JOFFRE: That is another way to characterize the dispute. Because this is written in a structural format, it's basically talking about how do you set up circuits together. This is the way that -- the end result of the circuits are going to be whether or not you can do the entire CRC calculation in a parallel

circuit which would --

THE COURT: For the 32 bits.

MR. JOFFRE: Yes, all 32 bits.

-- or whether or not you have to -- whether or not you can say, well, you do two bits at a time. And, so, this goes back to Intel's iteration point, that no it's not -- you don't need to do the entire CRC calculation at once; you can sort of break it up.

And what we are saying is no, when you are decomposing a circuit, a serial -- it says it's parallel decomposition of a serial CRC calculation circuit. What that means is the end result is that you have to be able to do whatever that CRC circuit was able to do in parallel.

THE COURT: Okay. So, what is it in the specification that tells me that your view is right, that it has to do all 32 bits at once?

MR. JOFFRE: So, the one place -- there is not much detail in the specification on parallel. But the one place that it is found is in Column 5, line 49. So, you see "Additionally, although CRC circuit 400 is shown as a serial CRC circuit, in alternative implementations, the CRC circuit can be implemented as a parallel decomposition of the serial circuit shown in" 400.

So, you took 400 and you've turned it into a

serial -- (reading) can be implemented as a parallel decomposition of that circuit. Such a parallel embodiment could be implemented as a circuit of XOR gates. Although the parallel implementation would be much more -- much more complex, it has the virtue that it could generate the CRC result in as little as one clock cycle.

THE COURT: So, why does that tell me that it's not -- that it's 32 bits at a time rather than 1 bit at a time or 2 bits at a time?

MR. JOFFRE: The reason being is that -- what that says is if you take all the data -- in the serial embodiment you have to go through many clock cycles in order to push the data through the serial circuit. Here it says you don't need to do that. You take the entire chunk of data through the parallel limitation, you will get within one clock cycle the end result. So, it's many, many, many times faster.

THE COURT: Okay. I think I understand.

Let's hear again from Mr. Campbell.

MR. CAMPBELL: Thank you, your Honor. Referring back to that same passage of the specification, it says that the "parallel implementation would require a more complex circuit," but "has the virtue of generating the CRC result in as little as one clock cycle," clearly

connoting that it depends. It depends on a number of things. It could calculate it in one clock cycle if you didn't have more data.

THE COURT: Well, do you agree that a clock cycle in a 32-bit chip means processing all 32 bits within the single clock cycle? Am I understanding that correctly?

MR. CAMPBELL: It depends. It can be, yes.

And just to frame this dispute, to take it out to just a slightly higher level briefly, the prior art does 32 bits at a time. Okay? So, there's no debate about that. The prior art circuits that we're talking about process 32 bits at a time.

Dr. Stone is saying it doesn't count because some of the packets that they work on are bigger than that; and, so, they're going to have to break it up and do it, you know, a couple of times before they get all the way through the packet. He's saying that you have to do everything all at once. We think, with due respect, that that's crazy because --

THE COURT: I'm not -- it might be, but I'm not sure he's saying that.

MR. CAMPBELL: Well, I would invite the court to read the deposition testimony of Dr. Stone that we've submitted as Exhibit 1, starting at about page 57 all the

way through 63. We walked through several of the protocols that are reflected by the polynomials that are listed in the patent here and asked him, okay, if we're going to take the teachings of Figure 2 and Figure 3 and we're going to try to build a circuit that satisfies the reach of claim 16, would it make any sense to even try? And he said no. It has no practical purpose for -- for those kind of big protocols, you know, with a 32-bit machine, it just makes no sense because what he's saying fundamentally is the only thing that a parallel decomposition could cover in claim 16 is everything all at once.

THE COURT: And not just 32 bits --

MR. CAMPBELL: Correct. And I pointed out earlier, your Honor, that --

THE COURT: Well, suppose I were to say parallel decomposition means you've got to be able to process 32 bits in parallel rather than doing it serially with 1 or 2 bits at a time.

MR. CAMPBELL: Then Dr. Stone's --

THE COURT: You would be happy?

MR. CAMPBELL: I mean, we -- I don't think that's the right construction, your Honor; but it wouldn't exclude the -- you know, the prior art.

THE COURT: Well, that's another question

which is going to be for the jury, not for me. But --

MR. CAMPBELL: I just don't see the principal basis on which you could say 32. If you look at that passage in the specification, I mean, it plainly says that you're going to have a serial calculation that's turned into a parallel decomposition. And if you --

THE COURT: Well, what serial calculation -- I'm not following it. Where does it say that?

MR. CAMPBELL: Okay. All right. If we -- I apologize, your Honor. Let me slow down just twice and point you to two specific things. The language at line 48 of Column 5 is talking about CRC circuit 400. And then it continues on that line. It --

THE COURT: It's shown as a serial --

MR. CAMPBELL: It's a serial CRC circuit.

THE COURT: So, that means it's not parallel decomposition, right?

MR. CAMPBELL: Correct. Serial means one bit at a time.

THE COURT: Yes, so not parallel.

MR. CAMPBELL: Right. So, one bit at a time.

If we go to claim 16 and look at what the claim actually says --

THE COURT: Okay.

MR. CAMPBELL: It is a dependent claim off of

claim 12, and it talks about things that the first and second CRC circuits must comprise. So, they need to include but they are not limited to these things. And those things that they have to include are "exclusive-or gates," otherwise known as "XOR gates," "configured as a parallel decomposition of a serial calculation circuit."

So, what the claim language on its face is telling us is your first circuit needs to have something, something very specific. It needs to have exclusive-or gates that are arranged as a parallel decomposition of what a serial circuit would do one bit at a time.

Now, there isn't anything in the specification that teaches you that that's limited to 32 bits. It simply isn't serial. You process multiple things at the same time; so, two or more bits need to be processed at the same time to satisfy the language of claim 16. If you're doing 32 bits at a time, that's great; but if you're doing fewer than 32 bits at a time that's also within the reach of that claim.

THE COURT: So, that's the basic difference between you?

MR. CAMPBELL: Yes. And then one final point, your Honor.

THE COURT: Would processing one bit at a time be parallel? No.

MR. CAMPBELL: It is not because that is the definition of serial.

THE COURT: Right.

MR. CAMPBELL: And I could give you a -- actually this example may help just a little bit. I mean, computers today are different; but back in the old days when we first had PCs, you know, you had to pay attention to what kind of port you had to get to the printer. Back in the old-old days, it was a serial connection where just one bit literally would flow out over the wire at a time. They made it faster by coming up with parallel ports where you had more than one bit that would flow out over the wire at a time but not all of the bits would flow out over the wire at the same time. You still would have the situation where you're processing multiple bits at the same time and you're just moving along.

Another illustration that I think might help is if you think about a single lane road. The cars are all lined up bumper to bumper. Only one can get through at a time. You can parallelize that process by adding additional lanes. If you add two, you are now letting cars travel in parallel. And you can make it even more parallel by adding additional lanes. But once you get out of the single lane where you're not doing one bit at

a time, you are now in the parallel world where you are processing -- you're working on multiple bits of data at the same time.

THE COURT: But if I understand correctly what they're saying, is that if you've got a 32-bit chip, that it has to be able to process all 32 bits in parallel. Am I -- does that make sense?

MR. CAMPBELL: That is not what Dr. Stone is saying.

THE COURT: No, but -- that seems to be what they're saying today. Is that -- am I --

MR. CAMPBELL: It is not. It is not what they're saying. What they are saying is -- let's just take an example. Let's say you had a 32-bit machine and you had a packet that you wanted to calculate a CRC for that's 50,000 bits long. Some of the protocols here are like that. They would say that your 32-bit machine calculating 32 bits at a time is not a parallel decomposition because it's not processing all of the bits at the same time.

THE COURT: All 32 at one time.

MR. CAMPBELL: No, all 50,000.

THE COURT: No, I don't think they're saying that.

MR. CAMPBELL: That is what they are saying,

your Honor.

THE COURT: Well, let's ask Mr. Joffre that.

Are you saying it has to be able to process all 50,000 at one time?

MR. JOFFRE: No, not -- what we're saying is that if you have a CRC result, then you have to parallel -- you have to process the input data in order to -- at one time in order to get to the input -- to the CRC result.

THE COURT: Am I correct that what you're saying is if you've got a 32-bit processor, it has to be able to process 32 bits in parallel? Is that accurate?

MR. JOFFRE: Yes. And the point -- and the reason why that's true is because you have to have a parallel decomposition of a serial CRC circuit. So, if you had -- you were able to do a 32-bit serial CRC calculation, you would want to be able to do that -- you would have to decompose the circuit so that it could do that process, you know, parallel configuration. That's what we're saying.

And, so, to start talking about there's huge packets, that's fine; but the question lies in whether or not you have -- when you have CRC results. And, so, if you have a CRC result and you have input data, take the input data, you put it through a parallel decomposition

of a circuit, and that -- which turns out to be basically one clock cycle, you will produce the CRC result in that -- using that parallel decomposition.

THE COURT: Okay. All right. Any final word, Mr. Campbell?

MR. CAMPBELL: Just one, your Honor. If you just take that recent example, if you have a 32-bit circuit and your packet is bigger than 32 bits, you obviously aren't going to be able to process all of those bits in one clock cycle.

THE COURT: Well, right. That seems to make sense.

MR. CAMPBELL: And, so, they're arguing that if you cannot process it in a single clock cycle, you don't have a parallel decomposition. We're saying that the specification, if you look at it, it says it could be completed in as little as one clock cycle. It's worded that way precisely because it's not necessarily going to be. It's going to depend on how much data you've got to process.

So, the notion that if you've got a 32-bit circuit, can you process a packet that's bigger than that is the core of the dispute and would be within the reach of claim 16; and that deposition testimony that I cited the court to makes crystal-clear what the disagreement

between the parties is on this.

THE COURT: Okay. Thank you.

Coming back to the preliminary instructions, under Heading 8 Stragent suggested "slightly favors infringement." The only change I'm making in the proposed revisions is to delete the language "slightly favors." So, with that, I think I've got my preliminary instructions.

Now, is there any objection to those instructions with these changes?

MR. JOFFRE: No, your Honor.

THE COURT: Mr. Campbell?

MR. CAMPBELL: No objection.

THE COURT: Okay. Thank you.

All right. So, I'm going to take a break now; and I think -- why don't I give you about half an hour. We'll come back at ten of 12:00. And what I'm going to try to do is to give you the actual claim constructions for these three items and allow you to comment on them or object to them or whatever. And I'm going to try to look at the exhibit objections so that I can deal with those -- well, maybe we'd better make it 12:00 rather than ten of 12:00. And that will give you an opportunity also to look at the two orders that I've entered and see if you have any questions about those.

Okay. So, let's take a recess until 12:00.

(Recess.)

THE COURT: All right. I've done a draft claim construction order which my assistant will bring down in a few minutes and what I would suggest is that we take an hour break for lunch after we get that to give you an opportunity to look at it. You can make any objections or suggest any changes in the order, and then hopefully we'll be done with it. And what I want to be sure is that we get any objections to the order on the record so that we don't have to go through this again at the charge conference. Okay?

Now, before we do that, I've been through the exhibits and the objections; and I guess the first question I have is have you both had a chance to read the two orders that were posted this morning?

UNIDENTIFIED SPEAKER: No, sir. They have not been posted.

THE COURT: They have not?

UNIDENTIFIED SPEAKER: No, sir.

THE COURT: Okay. We'll check on that. We'll try to get that done now and -- so that you can look at it during the next break.

UNIDENTIFIED SPEAKER: Yes, sir. I --

THE COURT: Basically, I mean, in simplified

form, I've determined that there is a lack of standing on the part of the other plaintiff. I'm going to allow you to introduce and rely on these licenses that were the result of a settlement. I am going to entertain instruction that those perhaps should be -- those should be given lesser weight than the ordinary licenses.

And with respect to the hedonic analysis, I've excluded that. And that, it seems to me, would make moot this effort to rely on the Hitt report.

Let me ask Mr. Campbell if that's true.

MR. CAMPBELL: If the hedonics information is not going to be presented, then Dr. Hitt and his report don't have anything to do with the issues before the court.

THE COURT: So, that issue would be moot.

MR. ALBRITTON: I think your orders, your Honor, make there really only two live disputes; so, I think that would take care of the Hitt report. Also, your ruling would resolve the issues related to those TAG documents. So, those are not at issue.

I believe that the --

THE COURT: Well, let's just be clear about it. So, since I'm going to allow you to rely on the licenses, that would mean that there is no longer a dispute as to Exhibit Numbers 39, 48, 49, 50, 51, 52, and

53 and 54, 55, 64, and 248; is that correct?

MR. ALBRITTON: Your Honor, I think that is partially correct. I certainly agree that that resolves the disputes with respect to Plaintiff's Exhibit 50 through 55, 64 and 248. The 39, 48, and 49, I would think that Intel has got a different view of --

THE COURT: Oh, I'm sorry. You're right. Yeah. I'm going to -- with respect to -- yes. That's a different issue. 39, 48, and 49, I'm going to allow those to be admitted for a limited purpose. And, so, that resolves that one, I think, right?

MR. ALBRITTON: Yes, sir. And then the only remaining issue then, your Honor, would be --

THE COURT: So, just to be clear --

MR. ALBRITTON: Yes, sir. I'm sorry.

THE COURT: 39, 48, and 49 are admitted for limited purpose.

50, 51, 52, 53, 54, 55, 64, and 248 are admitted.

And then 192 through 196, those are excluded because the issues become moot, correct?

MR. ALBRITTON: Yes, sir. We understand that you would not allow them to be admitted.

THE COURT: Right.

MR. ALBRITTON: Yes, sir.

THE COURT: And then with respect to 146, 147, and 148, we're going to -- I'm reserving on those depending on what happens at the trial.

MR. ALBRITTON: That's correct.

THE COURT: And then with DTX 186, that's moot because of my ruling with respect to the hedonics analysis, right?

MR. ALBRITTON: Yes, sir.

THE COURT: And then the remaining one is 226, 227, and 228 which is the file histories. I'm going to exclude those.

Does that take care of everything?

MR. ALBRITTON: Yes, sir, it does.

MR. CAMPBELL: Yes, your Honor.

THE COURT: Okay. So, I assume that you need a little time to review those and need to consult with your experts. Should we -- is 45 minutes enough to do that? Do you want to take a moment just to look at them quickly? You can take a moment now if you want.

MR. ALBRITTON: 45 minutes is very acceptable to the plaintiffs, your Honor.

THE COURT: Mr. Campbell?

MR. CAMPBELL: That will be fine, your Honor.

THE COURT: Okay. So, why don't we resume at 1:00, then. Okay? Thank you.

(Recess.)

THE COURT: Okay. What I'd like to do is do this in two steps with respect to the draft claim construction order. The first is to ask whether there are any suggestions that each of you has to make it clearer or to correct an obvious error in here. I obviously don't want you to reargue the whole set of claim construction issues.

And then second, once we have a final claim construction that I have adopted, I'm going to ask each of you which parts of it you object to and why and to ask you to propose an alternative in each case so that we have a clear record as to what objections there were to the claim construction.

So, why don't we start with Mr. Campbell on this first phase here. Are there any language changes that you would propose in here?

MR. CAMPBELL: Your Honor, I understand that you don't want to hear objections and reargument. I guess I would have a comment or two about the first one so that we at least understand what the court is proposing here.

I've read these constructions together; and as I've read them together, I will simply advise the court that I do not understand these constructions to be

precluding the application of claim 12 to a processor that is set up and intended to compute CRC results for packets that are larger than 32 bits. I'm not understanding this construction to foreclose that. If it does foreclose that, if that's what the intent is, then I do think that we are reading out explicit embodiments that are described in the specification.

THE COURT: Well, I am not adopting a construction that the claims require the capability of processing the entire set at one time. I am not saying that it requires that. I am saying that it is within the claims if it can process a batch, say, 32 bits at a time; but it does not require that it be able to process the entire transmission or whatever at one time.

MR. CAMPBELL: That is my understanding as I read through the proposed claim constructions together, your Honor.

THE COURT: Well, are there any changes that you're proposing here?

MR. CAMPBELL: Well, for example, in the first one --

THE COURT: Well, let's take them one at a time and then --

MR. CAMPBELL: Sure.

THE COURT: -- I'll go between you and

Mr. Albritton.

As to the first one, what changes, if any, do you propose? I'm not asking now for your objections. You'll get a chance to do that. I'm just asking for any proposed changes to make it clearer or easier to understand.

MR. CAMPBELL: Your Honor, I think if we were to insert anything at all, we would need to insert a clarification that the fact that two different CRC circuits under some circumstances will have an output register or a feedback path where the output of those circuits will be used is not foreclosed by the construction if there are other circumstances where the computation of the CRC result under the remaining constructions that the court has adopted does not involve any kind of sharing.

THE COURT: I'm not sure that I understand that. What specific language change are you proposing?

MR. CAMPBELL: We have a first and second circuits in the '072 patent claim 12 and a plurality of CRC circuits in claim 1 that are separate circuits that do not share an output register or feedback paths. What I am simply wanting to clarify, your Honor, is that the existence of a common feedback path or an output register where a CRC result that is otherwise calculated is placed

does not foreclose that processor from reading within the reach of the claims.

So, for example, if there are some circumstances where in the computation of a CRC result an output register is used and the incremental calculation is fed back on the way to getting to the final outcome, the mere fact of such an output register does not by itself mean that the device is outside the reach of the claims.

THE COURT: Well, let's hear from Mr. Albritton.

MR. ALBRITTON: Mr. Joffre will speak on that.

THE COURT: I'm sorry. Mr. Joffre, right.

MR. JOFFRE: I apologize. I'm not sure I understand Mr. Campbell's change. So, I -- we have no objection to this language. We think it's clear. It's separate circuits that do not share output registers or feedback paths. So, I'm not -- I don't quite understand what his proposal is; so, it's hard for me to object.

It sounds like he's making an invalidity argument, and I just -- I'm sorry. I apologize. I just don't have a way to respond to it. We are perfectly fine with this language.

THE COURT: Okay.

MR. CAMPBELL: Would the court like to hear

our objection?

THE COURT: We'll go through the objections when we finish this first phase. The first phase is to try and clarify it. And I'm not going to adopt the clarification that you suggested because I'm not sure that I understand it. But you can frame it in terms of an objection later on and propose language that you think should go in. Okay?

MR. CAMPBELL: Okay.

THE COURT: So, let's do the second one. Do you have any suggestions with respect to the second one?

MR. CAMPBELL: We don't have any suggestions for the second one. Again, we've read these together. And given the court's construction of "input data," I believe I understand what is here; and I don't have anything specific to propose.

THE COURT: Okay. Mr. Joffre, how about the second one?

MR. JOFFRE: No objections.

THE COURT: Okay. The third one?

MR. CAMPBELL: Again, your Honor, I don't have anything specific to propose here. I think we understand what the court has done.

THE COURT: Okay. Mr. Joffre?

MR. JOFFRE: We just have one minor

clarification.

THE COURT: Okay.

MR. JOFFRE: In the definition, "input data" is (reading) the block of data equivalent in size to the processor's capacity, we would recommend -- this is unclear to us a little bit, and we would recommend instead of using the word "processor" you put in "CRC circuits."

The reason why this is unclear is -- I think we've all today been arguing about what's been input into the CRC circuit. The reason there is some lack of clarity, which is the word "processor" alone, is that if we look at Figure 2, you'll see that the entire figure is a network processor; and on the left side, going into network processor there is input, in Figure 2.

THE COURT: Yeah.

MR. JOFFRE: And then if we go to figure -- that's not what we've been arguing about. We've been arguing about, in Figure 3, the input CRC data that goes into the individual CRC circuits.

And, so, for example, the statements that are on Column 4 around lines 35-36, those are the input CRC data that we've been talking about. In fact, the 32 bits that is referred to in the parenthetical, it says at Column 4, lines 45 through 46, "In one possible

implementation, the input CRC data is four bytes long." That input CRC data is that input CRC data at Figure 3.

So, we would just clarify that "input data" is the block of data equivalent in size to the CRC circuit's capacity, e.g., 32 bits for the CRC circuit.

THE COURT: Okay. Mr. Campbell, what's your reaction to that?

MR. CAMPBELL: Your Honor, I -- it depends on whether we're talking about an instant in time or over time. The processor capacity I think actually does correspond in the figures to the capacity of the number of bits that can be fed at one time into the circuits in Figure 3. So, I don't quite understand the distinction that's being suggested; and I am concerned that we will slip from what the court has indicated here to a larger period of time that (indiscernible) instead of a snapshot, I'm hearing a bit of an argument about needing to look at a longer period of time.

If you look at Figure 2, there is a bus that connects the input registers, the output registers, and the ALU. That bus is what feeds into the CRC circuits. So, the processor --

THE COURT: The processor capacity limits what can be done in a single clock cycle, right?

MR. CAMPBELL: Correct. If we're talking

about --

THE COURT: I think I'm going to leave this one the way it is.

What about the fourth one?

MR. CAMPBELL: I'm sorry. The fourth one, again, reading the constructions together, I don't have any suggestions for that one.

THE COURT: Okay. Mr. Joffre?

MR. JOFFRE: That's clear.

THE COURT: Okay. So, now let's go back to Number 1 and get on the record whatever objections there are, starting with Mr. Campbell.

MR. CAMPBELL: Yes, your Honor. Just very briefly --

THE COURT: Why don't I read it into the record so the record is clear. The first construction is the "first and second circuits" in '072 patent claim 12 and the "plurality of CRC circuits" in '244 patent claim 1 are separate circuits that do not share an output register or feedback paths.

MR. CAMPBELL: Our objection to this particular instruction, your Honor, arises from the face of the claim language in claim 12 and also claim 1 of the '244. I'll simply refer to claim 12 in my comments here.

The claim sets out (reading) a first cyclic

redundancy check circuit that is configured to perform a first CRC operation on input data, and then includes the requirement that the first CRC operation being performed uses a first polynomial --

THE COURT: You don't need to state the basis for your argument. All I'm looking for is do you have an objection to this first claim construction and what is your language that you would substitute for it.

MR. CAMPBELL: Your Honor, we would substitute for this language that the first and second circuits in claim 12 are circuits that have independent hardwired polynomials. The first circuit has its own hardwired polynomial, and the second circuit has its own hardwired polynomial. And there is no other requirement that should be imported into the meaning of the first and the second circuit because that's what the claim language itself says they need to have.

THE COURT: Okay. I think your objection is cleared up now.

Mr. Joffre, is there any Stragent objections to the first construction?

MR. JOFFRE: No, your Honor.

THE COURT: Okay. Let's move on to the second one, then. So, Mr. Campbell, is there an objection to the second construction?

I'll read that into the record. (Reading) A CRC output result or CRC result is a value equal to the complete remainder of the input data divided by a CRC polynomial, but not a partial remainder or interim result that is carried forward for use in a successive operation of the same circuit.

MR. CAMPBELL: Yes. Our objection is that we believe that the language after the comma but should be stricken from the construction, that a CRC calculation that proceeds incrementally and generates a CRC computation and successive requirements would have multiple CRC results that would qualify within the meaning of the claim language.

THE COURT: Okay. Mr. Joffre, is there any objection to that?

MR. JOFFRE: No objection.

THE COURT: Okay. So, let's go on to Number 3, then, which is (reading) input data is the block of data equivalent in size to the processor capacity, e.g., 32 bits for a 32-bit processor but not necessarily entire data package from which a complete CRC result is to be calculated by performing a CRC operation.

Mr. Campbell, is there an objection to that?

MR. CAMPBELL: We do not object to that, your Honor.

MR. JOFFRE: We don't object, your Honor.

THE COURT: Okay. You should stand up.

MR. JOFFRE: Oh, sorry.

THE COURT: Okay. The final one is (reading) a parallel decomposition of a serial CRC circuit is a circuit that calculates a CRC result by processing all bits of the input data at one time instead of a lesser number of bits such as 2.

Mr. Campbell, do you have an objection to that?

MR. CAMPBELL: No, your Honor. Subject to the objection that I made with respect to Number 1, aside from that, we don't have anything further.

THE COURT: Okay. Mr. Joffre?

MR. JOFFRE: No, your Honor.

THE COURT: Okay. All right. Good. We'll issue this order this afternoon.

Did you-all have a chance to see the orders which were entered in the docket? Did you have a chance to review that?

MR. ALBRITTON: Briefly, your Honor. We didn't have a chance to study them in great detail, but we looked at them briefly.

THE COURT: Do you have any questions based on your review?

MR. ALBRITTON: No questions that require clarification at this point, your Honor, no.

THE COURT: Okay. Mr. Campbell, how about you?

MR. CAMPBELL: I have not had -- I have not been able to get access to them quite yet and I haven't read them, but I don't have any questions. I understand what the court has said earlier today.

THE COURT: Okay. Well, I have a few final items here.

First of all, have the parties stipulated to the level of skill in the art?

MR. BUMGARDNER: It's been opined --

THE COURT: You need to say who you are because the person making the transcript otherwise wouldn't be able to figure it out.

MR. BUMGARDNER: Certainly, your Honor. Barry Bumgardner on behalf of Stragent.

It is contained in the expert opinions. I believe it does differ slightly, although I don't believe there are dramatic differences. I believe Stragent's person with ordinary skill in the art is a little bit lesser skill than the one of Intel but -- I might have that backwards, and Mr. Campbell can correct me. They are not the same, but they're close.

MR. CAMPBELL: They are very close, your Honor.

THE COURT: Maybe the two of you could get together and come up with a single definition so that the jury doesn't get confused.

MR. CAMPBELL: Sure.

MR. BUMGARDNER: I think we can, your Honor.

THE COURT: Okay. That would be good.

Now, I need to know what questions counsel want me to ask at the jury *voir dire*. Have you submitted questions? What's your position on that?

MR. ALBRITTON: We didn't submit any specific questions, your Honor. We would just ask the court to inquire as to the jurors' -- where they work. This will be on the jury questionnaire, of course; but it might --

THE COURT: On the -- aren't there standard questions that are put on the screen?

MR. ALBRITTON: The way -- it varies a little bit in Marshall with what Judge Gilstrap, for instance, does than what Judge Davis does. I believe Judge Davis' standard is he even asks them to say what their hobby is. What I would just respectfully suggest is that the court ask are they married, what do they do for a living, and if they are retired what did they do before they retired, what does their spouse do for a living, and if the spouse

is retired what did the spouse do prior to retirement; and really there is nothing else in particular, your Honor. Just basic biographical information that the court thinks is appropriate.

THE COURT: I don't have any problem with that.

Mr. Campbell, is there anything else that you think ought to be in there?

MR. CAMPBELL: Your Honor, Judge Davis' standard question is as Mr. Albritton suggested, to simply ask them at the beginning what they like to do in their free time; and we think that would be a good thing to ask.

THE COURT: Okay. That's fine.

MR. ALBRITTON: We're certainly not going to object to that, your Honor.

THE COURT: So, the two of you will get together and agree on what gets put up on the screen for the jurors to address?

MR. CAMPBELL: Yes.

MR. ALBRITTON: Yes, sir.

THE COURT: Okay. Good.

And then I've asked you to come up with a document for the jury that sets forth the claims incorporating the language of claim 12 into claim 16 and

also setting forth the court's claim construction. So, why don't we call that document "List of Asserted Claims and Court's Construction of Claim Terminology." And if you could get together and come up with proposed language by close of business tomorrow that I could review, that would be helpful.

MR. ALBRITTON: Your Honor, could you repeat -- "List of Asserted Claims and"?

THE COURT: "Court's Construction of Claim Terminology."

If you want to suggest calling it something else, I'm happy to entertain it; but that seemed to me to be descriptive.

MR. ALBRITTON: Yes, sir. That sounds fine to us, your Honor.

THE COURT: Okay. So, why don't you both get together and come up with a document which you jointly submit -- and I can look at it over the weekend -- by the close of business tomorrow.

Then, as I think I mentioned, I'd like to get supplemental revised claim constructions for the invalidity contentions. It seems to me it would be a lot clearer to the jury if, for example, there were an instruction that says "Intel claims that claim 10 is invalid because it was anticipated by the" -- whatever,

the hydrogen reference or whatever, so that there is something specific in the instructions that the jury could focus on saying "I'm supposed to be determining anticipation with respect to this one reference and obviousness with respect to a combination of such-and-such references."

Is there any problem in doing that, Mr. Campbell?

MR. CAMPBELL: No, your Honor. We'd be happy to do that.

THE COURT: Okay.

MR. ALBRITTON: That's agreeable to us, your Honor.

THE COURT: Okay. Then why don't you do that and again plan to get me those supplemental instructions by the close of business tomorrow. Okay?

And then you also need, I think, to agree on a new verdict form because we're going to ask for separate verdicts on the wafers and the chips. Can you get together and get me a revised proposed verdict form?

MR. ALBRITTON: Yes, sir, we will.

THE COURT: Okay. And I think that's it.

I just want to caution Stragent. Now that I've issued -- or am about to issue this claim construction order, Dr. Woods has to be careful not to

start supplementing my claim construction order or adding other claim constructions. Okay?

MR. ALBRITTON: Yes, sir. We are very cognizant of that fact, and Dr. Stone will adhere strictly to the court's constructions.

THE COURT: Did I say "Woods"? I meant Stone. Okay.

MR. ALBRITTON: Well, it's all a matter of -- wood, stone...

THE COURT: All right. And the same would be true for Intel's expert witnesses.

Is there anything else that either one of you would like to raise now?

Mr. Albritton?

MR. ALBRITTON: I don't believe so, your Honor. Nothing on behalf of the plaintiff.

THE COURT: Okay.

MR. CAMPBELL: I don't have any --

MR. ALBRITTON: I do have one question just as a matter of procedure. If one of the parties were inclined to make an offer of proof for appellate purposes, does the court have a preference on how that's done? Sometimes Judge Davis will, for instance, just let the parties do a written offer of proof. Would that be satisfactory to the court, or would the court like to

hear the witness live as to any matters? And I'm not certain that there will be that; but there may be issues for Intel, may be issues for us. So, that was my first question.

And the second question was as to timing. Should that be done -- does that need to be done before that witness testifies or just before the party rests its case? I just didn't know what the court's preference was.

THE COURT: So, the predicate assumption here is that I've sustained an objection to part of the witness' testimony and you want to have a proffer as to what the witness would testify to?

MR. ALBRITTON: Yes, possibly, your Honor. So, like, for instance, if there was to be an offer of proof made with respect to the hedonic regression, for instance.

THE COURT: Oh, I see. Yeah, that could be done in writing. That's not a problem. And you could do that before the close of your case.

MR. ALBRITTON: Thank you very much, your Honor.

THE COURT: But is there any other issue other than --

MR. ALBRITTON: No, sir. There may be issues

that Intel would want. I don't know. But that was one that just came to mind as a potential issue with respect to our case.

THE COURT: Okay. Mr. Campbell?

MR. CAMPBELL: I don't have anything further for the court today.

THE COURT: Okay. Thank you both, counsel. I appreciate your coming here. I think that your choice to do that was a good one. That made it a lot easier for me and hopefully easier for you, too.

MR. ALBRITTON: Thank you very much.

MR. CAMPBELL: Thank you.

THE COURT: Okay. Thank you.

(Proceedings adjourned.)

CERTIFICATION

I certify that on this date, March 6, 2014, the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

/s/
TONYA B. JACKSON, RPR-CRR

/s/
CHRISTINA L. BICKHAM, RMR-CRR

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